

FILED

MAY 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EFRAIN PENA-GARCIA,

Defendant - Appellant.

No. 05-10552

D.C. No. CR-04-00306-PMP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Efrain Pena-Garcia appeals from his sentence imposed following his guilty plea conviction for unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326. Garcia contends that district court err by sentencing him to a term of 52

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

months when he only pled to the elements of 8 U.S.C. § 1326(a), which carries a maximum sentence of two years and that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) is no longer good law. This issue is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

AFFIRMED.